

December 31, 2006, as well. For rules relating to overall foreign losses and separate limitation losses in consolidated return years beginning on or before *December 21, 2007* see 26 CFR 1.1502-9 (revised as of April 1, 2007).

(f) *Expiration date.* The applicability of this section expires on *December 20, 2010*.

[T.D. 9371, 72 FR 72603, Dec. 21, 2007]

COMPUTATION OF CONSOLIDATED  
TAXABLE INCOME

**§ 1.1502-11 Consolidated taxable income.**

(a) *In general.* The consolidated taxable income for a consolidated return year shall be determined by taking into account:

(1) The separate taxable income of each member of the group (see § 1.1502-12 for the computation of separate taxable income);

(2) Any consolidated net operating loss deduction (see §§ 1.1502-21 (or 1.1502-21A, as appropriate) for the computation of the consolidated net operating loss deduction);

(3) Any consolidated capital gain net income (net capital gain for taxable years beginning before January 1, 1977) (see §§ 1.1502-22 (or 1.1502-22A, as appropriate) for the computation of the consolidated capital gain net income (net capital gain for taxable years beginning before January 1, 1977));

(4) Any consolidated section 1231 net loss (see §§ 1.1502-23 (or 1.1502-23A, as appropriate) for the computation of the consolidated section 1231 net loss);

(5) Any consolidated charitable contributions deduction (see § 1.1502-24 for the computation of the consolidated charitable contributions deduction);

(6) Any consolidated section 922 deduction (see § 1.1502-25 for the computation of the consolidated section 922 deduction);

(7) Any consolidated dividends received deduction (see § 1.1502-26 for the computation of the consolidated dividends received deduction); and

(8) Any consolidated section 247 deduction (see § 1.1502-27 for the computation of the consolidated section 247 deduction).

(b) *Elimination of circular stock basis adjustments when there is no excluded*

*COD income*—(1) *In general.* If one member (P) disposes of the stock of another member (S), this paragraph (b) limits the use of S's deductions and losses in the year of disposition and the carryback of items to prior years. The purpose of the limitation is to prevent P's income or gain from the disposition of S's stock from increasing the absorption of S's deductions and losses, because the increased absorption would reduce P's basis (or increase its excess loss account) in S's stock under § 1.1502-32 and, in turn, increase P's income or gain. See paragraph (b)(3) of this section for the application of these principles to P's deduction or loss from the disposition of S's stock, and paragraph (b)(4) of this section for the application of these principles to multiple stock dispositions. This paragraph (b) applies only when no member realizes discharge of indebtedness income that is excluded from gross income under section 108(a) (excluded COD income) during the taxable year of the disposition. See paragraph (c) of this section for rules that apply when a member realizes excluded COD income during the taxable year of the disposition. See § 1.1502-19(c) for the definition of disposition.

(2) *Limitation on deductions and losses*—(i) *Determination of amount of limitation.* If P disposes of one or more shares of S's stock, the extent to which S's deductions and losses for the tax year of the disposition (and its deductions and losses carried over from prior years) may offset income and gain is subject to limitation. The amount of S's deductions and losses that may offset income and gain is determined by tentatively computing taxable income (or loss) for the year of disposition (and any prior years to which the deductions or losses may be carried) without taking into account P's income and gain from the disposition.

(ii) *Application of limitation.* S's deductions and losses offset income and gain only to the extent of the amount determined under paragraph (b)(2)(i) of this section. To the extent S's deductions and losses in the year of disposition cannot offset income or gain because of the limitation under this paragraph (b), the items are carried to

other years under the applicable provisions of the Internal Revenue Code and regulations as if they were the only items incurred by S in the year of disposition. For example, to the extent S incurs an operating loss in the year of disposition that is limited, the loss is treated as a separate net operating loss attributable to S arising in that year. The tentative computation does not affect the manner in which S's unlimited deductions and losses are absorbed or the manner in which deductions and losses of other members are absorbed. (If the amount of S's unlimited deductions and losses actually absorbed is less than the amount absorbed in the tentative computation, P's stock basis adjustments under § 1.1502-32 reflect only the amounts actually absorbed.)

(iii) *Examples.* For purposes of the examples in this paragraph (b), unless otherwise stated, P owns all of the only class of S's stock for the entire year, S owns no stock of lower-tier members, the tax year of all persons is the calendar year, all persons use the accrual method of accounting, the facts set forth the only corporate activity, all transactions are between unrelated persons, and tax liabilities are disregarded. The principles of this paragraph (b)(2) are illustrated by the following examples.

*Example 1. Limitation on losses with respect to stock gain.* (a) P has a \$500 basis in S's stock. For Year 1, P has ordinary income of \$30 (determined without taking P's gain or loss from the disposition of S's stock into account) and S has an \$80 ordinary loss. P sells S's stock for \$520 at the close of Year 1.

(b) To determine the amount of the limitation on S's loss under paragraph (b)(2)(i) of this section, and the effect under § 1.1502-32(b) of the absorption of S's loss on P's basis in S's stock, P's gain or loss from the disposition of S's stock is not taken into account. The group is tentatively treated as having a consolidated net operating loss of \$50 (P's \$30 of income minus S's \$80 loss). Thus, \$50 of S's loss is limited under this paragraph (b).

(c) Because \$30 of S's loss is absorbed in the determination of consolidated taxable income under paragraph (b)(2)(ii) of this section, P's basis in S's stock is reduced under § 1.1502-32(b) from \$500 to \$470 immediately before the disposition. Consequently, P recognizes a \$50 gain from the sale of S's stock and the group has consolidated taxable income of \$50 for Year 1 (P's \$30 of ordinary income and \$50 gain from the sale of S's stock,

less the \$30 of S's loss). In addition, S's limited loss of \$50 is treated as a separate net operating loss attributable to S and, because S ceases to be a member, the loss is apportioned to S under § 1.1502-21 (or § 1.1502-79A, as appropriate) and carried to its first separate return year.

*Example 2. Carrybacks and carryovers.* (a) For Year 1, the P group has consolidated taxable income of \$30, and a consolidated net capital loss of \$100 (\$50 attributable to P and \$50 to S). At the beginning of Year 2, P has a \$300 basis in S's stock. For Year 2, P has ordinary income of \$30, and a \$20 capital gain (determined without taking the \$100 consolidated net capital loss carryover or P's gain or loss from the disposition of S's stock into account), and S has a \$100 ordinary loss. P sells S's stock for \$280 at the close of Year 2.

(b) To determine the amount of the limitation under paragraph (b)(2)(i) of this section on S's losses, and the effect of the absorption of S's losses on P's basis in S's stock under § 1.1502-32(b), P's gain or loss from the disposition of S's stock is not taken into account. For Year 2, the P group is tentatively treated as having a \$70 consolidated net operating loss (S's \$100 ordinary loss, less P's \$30 of ordinary income). The P group is also treated as having no consolidated net capital gain in Year 2, because P's \$20 capital gain is reduced by \$20 of the consolidated net capital loss carryover from Year 1 under section 1212(a) (the absorption of which is attributed equally to P and S). In addition, of the \$70 consolidated net operating loss, \$30 is carried back to Year 1 and offsets P's ordinary income in that year, and \$40 is carried forward. Consequently, \$40 of S's operating loss from Year 2, and \$40 of the consolidated net capital loss carryover from Year 1 attributable to S, are limited under this paragraph (b).

(c) Under paragraph (b)(2)(ii) of this section, the limitation under this paragraph (b) does not affect the absorption of any deductions and losses attributable to P, \$60 of S's operating loss from Year 2, and \$10 of the consolidated net capital loss from Year 1 attributable to S. Consequently, P's basis in S's stock is reduced under § 1.1502-32(b) by \$70, from \$300 to \$230, and P recognizes a \$50 gain from the sale of S's stock in Year 2. Thus, the P group is treated as having a \$20 unlimited net operating loss that is carried back to Year 1:

Ordinary income:

P .....	\$30
S (excluding the \$40 limited loss) .....	(60)
Sub Total .....	\$ (30)
Consolidated net capital gain:	
P (\$20 + \$50 from S stock - \$50 from Year 1) .....	\$20
S (-\$10 from Year 1) .....	(10)
Sub Total .....	\$10
Consolidated taxable income .....	\$(20)

(d) Under paragraph (b)(2)(ii) of this section, S's \$40 ordinary loss from Year 2 that is limited under this paragraph (b) is treated as a separate net operating loss arising in Year 2. Similarly, \$40 of the consolidated net capital loss from Year 1 attributable to S is treated as a separate net capital loss carried over from Year 1. Because S ceases to be a member, the \$40 net operating loss from Year 2 and the \$40 consolidated net capital loss from Year 1 are allocated to S under §§ 1.1502-21 and 1.1502-22, respectively (or § 1.1502-79A, as appropriate) and are carried to S's first separate return year.

*Example 3. Allocation of basis adjustments.*

(a) For Year 1, the P group has consolidated taxable income of \$100. At the beginning of Year 2, P has a \$40 basis in each of the 10 shares of S's stock. For Year 2, P has an \$80 ordinary loss (determined without taking into account P's gain or loss from the disposition of S's stock) and S has an \$80 ordinary loss. P sells 2 shares of S's stock for \$85 each at the close of Year 2.

(b) Under paragraph (b)(2)(i) of this section, the amount of the limitation on S's loss is determined by tentatively treating the P group as having a \$160 consolidated net operating loss for Year 2. Of this amount, \$100 is carried back under section 172 and absorbed in Year 1 (\$50 attributable to S and \$50 attributable to P). Consequently, \$30 of S's loss is limited under this paragraph (b).

(c) Under paragraph (b)(2)(ii) of this section, the limitation under this paragraph (b) does not affect the absorption of P's \$80 ordinary loss or \$50 of S's ordinary loss. Consequently, P's basis in each share of S's stock is reduced from \$40 to \$35 under § 1.1502-32(b), and P recognizes a \$100 gain from the sale of the 2 shares. Thus, the P group is treated as having a \$30 unlimited net operating loss:

**Ordinary loss:**

P .....	\$(80)
S (excluding the \$30 limited loss) .....	(50)
Sub Total .....	\$(130)
Consolidated net capital gain:	
P .....	\$100
S .....	0
Sub Total .....	\$100
Unlimited consolidated net operating loss .....	\$(30)

(d) A portion of the \$130 of unlimited operating losses for Year 2 is fully absorbed in that year, and a portion is carried back to Year 1. Thus, \$61.50 of P's \$80 loss (\$100 multiplied by \$80/\$130) and \$38.50 of S's \$50 unlimited loss (\$100 multiplied by \$50/\$130) are absorbed in Year 2. P's remaining \$18.50 of loss and S's remaining \$11.50 of loss are not subject to limitation and are carried back and absorbed in Year 1.

(e) Under paragraph (b)(2)(ii) of this section, S's \$30 of loss limited under this paragraph (b) is treated as a separate net operating loss.

(3) *Loss dispositions*—(i) *General rule.* The principles of paragraph (b)(2) of this section apply to the extent necessary to carry out the purposes of paragraph (b)(1) of this section if P recognizes a deduction or loss from the disposition of S's stock.

(ii) *Example.* The principles of this paragraph (b)(3) are illustrated by the following example.

*Example.* (a) P has a \$400 basis in S's stock. For Year 1, P has a capital gain of \$100 (determined without taking P's gain or loss from the disposition of S's stock into account) and S has both a \$60 capital loss and a \$200 ordinary loss. P sells S's stock for \$140 at the close of Year 1.

(b) Under paragraph (b)(3) of this section, the amount of S's ordinary and capital losses that may offset income and gain is determined by tentatively computing the group's consolidated net operating loss and consolidated net capital loss without taking into account P's loss from the disposition of S's stock. The limitation is necessary to prevent P's loss from the disposition of S's stock from affecting the absorption of S's losses and thereby the adjustments to P's basis in S's stock under § 1.1502-32(b) (which would, in turn, affect P's loss).

(c) Under the principles of paragraph (b)(2)(i) of this section, the amount of the limitation on S's loss is determined by tentatively treating the P group as having a \$40 consolidated net capital gain and a \$200 ordinary loss, which results in a \$160 consolidated net operating loss for Year 1, all of which is attributable to S. Thus, \$160 of S's ordinary loss is limited under this paragraph (b). See also §§ 1.337(d)-2, 1.1502-35, and 1.1502-36 for rules relating to basis adjustments and allowance of stock loss on dispositions of stock of a subsidiary member.

(4) *Multiple dispositions*—(i) *Stock of a member.* To the extent income, gain, deduction, or loss from a prior disposition of S's stock is deferred under any rule of law, the limitation under paragraph (b)(2) of this section is determined by treating the year the deferred amount is taken into account as the year of the disposition.

(ii) *Stock of different members.* If S is a higher-tier corporation with respect to another member (T), and all of T's items of income, gain, deduction, and

loss (including the absorption of T's deduction or loss) would be fully reflected in P's basis in S's stock under § 1.1502-32, the limitation under paragraph (b)(2)(i) of this section with respect to T's deductions and losses is determined without taking into account any income, gain, deduction, or loss from the disposition of the stock of S or T (or of the stock of members owned in the chain connecting S and T). However, this paragraph (b) does not otherwise limit the absorption of one member's deduction or loss with respect to the disposition of another member's stock.

(iii) *Examples.* The principles of this paragraph (b)(4) are illustrated by the following examples.

*Example 1. Chain of subsidiaries.* (a) P owns all of S's stock with a \$500 basis, and S owns all of T's stock with a \$500 basis. For Year 1, P has ordinary income of \$30, S has no income or loss, and T has an \$80 ordinary loss. P sells S's stock for \$520 at the close of Year 1.

(b) Under paragraph (b)(4) of this section, to determine the amount of the limitation under paragraph (b) of this section on T's loss, and the effect of the absorption of T's loss on P's basis in S's stock under § 1.1502-32(b), P's gain or loss from the disposition of S's stock is not taken into account. The group is tentatively treated as having a consolidated net operating loss of \$50 (P's \$30 of income minus T's \$80 loss). Because only \$30 of T's loss offsets income or gain, P's basis in S's stock is reduced under § 1.1502-32(b) from \$500 to \$470 immediately before the disposition of S's stock. Thus, P takes into account a \$50 gain from the sale of S's stock.

(c) The facts are the same as in paragraph (a) of this *Example 1*, except that S has a \$10 excess loss account in T's stock (rather than a \$500 basis). Under paragraph (b)(4) of this section, neither P's gain or loss from the disposition of S's stock nor S's gain or loss from the disposition of T's stock (under § 1.1502-19) are taken into account for purposes of the tentative computations and the effect of any absorption under § 1.1502-32(b) on P's basis in S's stock and S's excess loss account in T's stock. The group is tentatively treated as having a consolidated net operating loss of \$50 (P's \$30 of income minus T's \$80 loss), and only \$30 of T's loss may offset the group's income or gain. Under § 1.1502-32(b), the absorption of \$30 of T's loss increases S's excess loss account in T's stock to \$40 and, under § 1.1502-19, the excess loss account is taken into account. Moreover, under § 1.1502-32(b), P's basis in S's stock is increased immediately before the sale by \$10 (S's \$40 gain under § 1.1502-19(b) minus T's \$30

loss absorbed and tiered up under § 1.1502-32(b)), from \$500 to \$510. Thus, P takes into account a \$10 gain from the sale of S's stock, and S takes into account a \$40 gain from its excess loss account in T's stock.

*Example 2. Brother-sister subsidiaries.* (a) P owns all of the stock of S1 and S2, each with a \$50 basis. For Year 1, the group has a \$100 consolidated net operating loss (\$50 of which is attributable to S1, and \$50 to S2) determined without taking gain or loss from the disposition of member stock into account. At the close of Year 1, P sells the stock of S1 and S2 for \$100 each.

(b) Paragraph (b)(4) of this section does not limit the loss of S1 or S2 with respect to the disposition of stock of the other. Consequently, each subsidiary's loss may offset P's gain from the disposition of the stock of the other subsidiary. Because this absorption results in a \$50 reduction in P's basis in the stock of each subsidiary under § 1.1502-32(b), P's aggregate gain from the stock dispositions is increased from \$100 to \$200, \$100 of which is offset by the losses of the subsidiaries.

(5) *Effective date.* This paragraph (b) applies to stock dispositions occurring in consolidated return years beginning on or after January 1, 1995. For prior years, see § 1.1502-11(b) as contained in the 26 CFR part 1 edition revised as of April 1, 1994.

(c) *Elimination of circular stock basis adjustments when there is excluded COD income—(1) In general.* If one member (P) disposes of the stock of another member (S) in a year during which any member realizes excluded COD income, this paragraph (c) limits the use of S's deductions and losses in the year of disposition and the carryback of items to prior years, the amount of the attributes of certain members that can be reduced in respect of excluded COD income of certain other members, and the attributes that can be used to offset an excess loss account taken into account by reason of the application of § 1.1502-19(c)(1)(iii)(B). In addition to the purpose set forth in paragraph (b)(1) of this section, the purpose of these limitations is to prevent the reduction of tax attributes in respect of excluded COD income from affecting P's income, gain, or loss on the disposition of S stock (including a disposition of S stock that results from the application of § 1.1502-19(c)(1)(iii)(B)) and, in turn, affecting the attributes available for reduction pursuant to sections 108

and 1017 and § 1.1502-28. See § 1.1502-19(c) for the definition of disposition.

(2) *Computation of tax liability, reduction of attributes, and computation of limits on absorption and reduction of attributes.* If a member realizes excluded COD income in the taxable year during which P disposes of S stock, the steps used to compute tax liability, to effect the reduction of attributes, and to compute the limitations on the absorption and reduction of attributes are as follows. These steps also apply to determine whether and to what extent an excess loss account must be taken into account as a result of the application of § 1.1502-19(b)(1) and (c)(1)(iii)(B).

(i) *Limitation on deductions and losses to offset income or gain.* First, the determination of the extent to which S's deductions and losses for the tax year of the disposition (and its deductions and losses carried over from prior years) may offset income and gain is made pursuant to paragraphs (b)(2) and (3) of this section.

(ii) *Tentative adjustment of stock basis.* Second, § 1.1502-32 is tentatively applied to adjust the basis of the S stock to reflect the amount of S's income and gain included, and unlimited deductions and losses that are absorbed, in the tentative computation of taxable income or loss for the year of the disposition (and any prior years) that is made pursuant to paragraph (b)(2) of this section, but not to reflect the realization of excluded COD income and the reduction of attributes in respect thereof.

(iii) *Tentative computation of stock gain or loss.* Third, in the case of a disposition of S stock that does not result from the application of § 1.1502-19(c)(1)(iii)(B), P's income, gain, or loss from the disposition of S stock is computed. For this purpose, the result of the computation pursuant to paragraph (c)(2)(ii) of this section is treated as the basis of such stock.

(iv) *Tentative computation of tax imposed.* Fourth, the tax imposed by chapter 1 of the Internal Revenue Code for the year of disposition (and any prior years) is tentatively computed. For this purpose, in the case of a disposition of S stock that does not result from the application of § 1.1502-19(c)(1)(iii)(B), the tentative computa-

tion of tax imposed takes into account P's income, gain, or loss from the disposition of S stock computed pursuant to paragraph (c)(2)(iii) of this section. The tentative computation of tax imposed is made without regard to whether all or a portion of an excess loss account in a share of S stock is required to be taken into account pursuant to § 1.1502-19(b)(1) and (c)(1)(iii)(B).

(v) *Tentative reduction of attributes.* Fifth, the rules of sections 108 and 1017 and § 1.1502-28 are tentatively applied to reduce the attributes remaining after the tentative computation of tax imposed pursuant to paragraph (c)(2)(iv) of this section.

(vi) *Actual adjustment of stock basis.* Sixth, § 1.1502-32 is applied to reflect the amount of S's income and gain included, and unlimited deductions and losses that are absorbed, in the tentative computation of tax imposed for the year of the disposition (and any prior years) made pursuant to paragraph (c)(2)(iv) of this section, and the excluded COD income applied to reduce attributes and the attributes tentatively reduced in respect of the excluded COD income pursuant to paragraph (c)(2)(v) of this section.

(vii) *Actual computation of stock gain or loss.* Seventh, the group's actual gain or loss on the disposition of S stock (including a disposition that results from the application of § 1.1502-19(c)(1)(iii)(B)) is computed. The result of the computation pursuant to paragraph (c)(2)(vi) of this section is treated as the basis of such stock.

(viii) *Actual computation of tax imposed.* Eighth, the tax imposed by chapter 1 of the Internal Revenue Code for the year of the disposition (and any prior years) is computed. The actual tax imposed on the group for the year of the disposition is computed by applying the limitation computed pursuant to paragraph (c)(2)(i) of this section, and by including the gain or loss recognized on the disposition of S stock computed pursuant to paragraph (c)(2)(vii) of this section. However, attributes that were tentatively used in the computation of tax imposed pursuant to paragraph (c)(2)(iv) of this section and attributes that were tentatively reduced pursuant to paragraph (c)(2)(v) of this section cannot offset

any excess loss account taken into account as a result of the application of § 1.1502-19(b)(1) and (c)(1)(iii)(B).

(ix) *Actual reduction of attributes.* Ninth, the rules of sections 108 and 1017 and § 1.1502-28 are actually applied to reduce the attributes remaining after the actual computation of tax imposed pursuant to paragraph (c)(2)(viii) of this section.

(A) *S or a lower-tier corporation realizes excluded COD income.* If S or a lower-tier corporation of S realizes excluded COD income, the aggregate amount of excluded COD income that is applied to reduce attributes attributable to members other than S and any lower-tier corporation of S pursuant to this paragraph (c)(2)(ix) shall not exceed the aggregate amount of excluded COD income that was tentatively applied to reduce attributes attributable to members other than S and any lower-tier corporation of S pursuant to paragraph (c)(2)(v) of this section. The amount of the actual reduction of attributes attributable to S and any lower-tier corporation of S that may be reduced in respect of the excluded COD income of S or a lower-tier corporation of S shall not be so limited.

(B) *A member other than S or a lower-tier corporation realizes excluded COD income.* If a member other than S or a lower-tier corporation of S realizes excluded COD income, the aggregate amount of excluded COD income that is applied to reduce attributes (other than credits) attributable to S and any lower-tier corporation of S pursuant to this paragraph (c)(2)(ix) shall not exceed the aggregate amount of excluded COD income that was tentatively applied to reduce attributes (other than credits) attributable to S and any lower-tier corporation of S pursuant to paragraph (c)(2)(v) of this section. The amount of the actual reduction of attributes attributable to any member other than S and any lower-tier corporation of S that may be reduced in respect of the excluded COD income of S or a lower-tier corporation of S shall not be so limited.

(3) *Special rules.* (i) If the reduction of attributes attributable to a member is prevented as a result of a limitation described in paragraph (c)(2)(ix)(B) of this section, the excluded COD income

that would have otherwise been applied to reduce such attributes is applied to reduce the remaining attributes of the same type that are available for reduction under § 1.1502-28(a)(4), on a pro rata basis, prior to reducing attributes of a different type. The reduction of such remaining attributes, however, is subject to any applicable limitation described in paragraph (c)(2)(ix)(B) of this section.

(ii) To the extent S's deductions and losses in the year of disposition (or those of a lower-tier corporation of S) cannot offset income or gain because of the limitation under paragraph (b) of this section or this paragraph (c) and are not reduced pursuant to sections 108 and 1017 and § 1.1502-28, such items are carried to other years under the applicable provisions of the Internal Revenue Code and regulations as if they were the only items incurred by S (or a lower-tier corporation of S) in the year of disposition. For example, to the extent S incurs an operating loss in the year of disposition that is limited and is not reduced pursuant to section 108 and § 1.1502-28, the loss is treated as a separate net operating loss attributable to S arising in that year.

(4) *Definition of lower-tier corporation.* A corporation is a lower-tier corporation of S if all of its items of income, gain, deduction, and loss (including the absorption of deduction or loss and the reduction of attributes other than credits) would be fully reflected in P's basis in S's stock under § 1.1502-32.

(5) *Examples.* For purposes of the examples in this paragraph (c), unless otherwise stated, the tax year of all persons is the calendar year, all persons use the accrual method of accounting, the facts set forth the only corporate activity, all transactions are between unrelated persons, tax liabilities are disregarded, and no election under section 108(b)(5) is made. The principles of this paragraph (c) are illustrated by the following examples:

*Example 1. Departing member realizes excluded COD income.* (i) *Facts.* P owns all of S's stock with a \$90 basis. For Year 1, P has ordinary income of \$30, and S has an \$80 ordinary loss and \$100 of excluded COD income from the discharge of non-intercompany indebtedness. P sells the S stock for \$20 at the close of Year 1. As of the beginning of Year 2, S

has Asset A with a basis of \$0 and a fair market value of \$20.

(ii) *Analysis.* The steps used to compute the tax imposed on the group, to effect the reduction of attributes, and to compute the limitations on the use and reduction of attributes are as follows:

(A) *Computation of limitation on deductions and losses to offset income or gain.* To determine the amount of the limitation under paragraph (c)(2)(i) of this section on S's loss and the effect of the absorption of S's loss on P's basis in S's stock under § 1.1502-32(b), P's gain or loss from the disposition of S's stock is not taken into account. The group is tentatively treated as having a consolidated net operating loss of \$50 (P's \$30 of income minus S's \$80 loss). Thus, \$30 of S's loss is unlimited and \$50 of S's loss is limited under paragraph (c)(2)(i) of this section. Under the principles of § 1.1502-21(b)(2)(iv), all of the consolidated net operating loss is attributable to S.

(B) *Tentative adjustment of stock basis.* Then, pursuant to paragraph (c)(2)(ii) of this section, § 1.1502-32 is tentatively applied to adjust the basis of S stock. For this purpose, however, adjustments attributable to the excluded COD income and the reduction of attributes in respect thereof are not taken into account. Under § 1.1502-32(b), the absorption of \$30 of S's loss decreases P's basis in S's stock by \$30 to \$60.

(C) *Tentative computation of stock gain or loss.* Then, P's income, gain, or loss from the sale of S stock is computed pursuant to paragraph (c)(2)(iii) of this section using the basis computed in the previous step. Thus, P is treated as recognizing a \$40 loss from the sale of S stock.

(D) *Tentative computation of tax imposed.* Pursuant to paragraph (c)(2)(iv) of this section, the tax imposed for the year of disposition is then tentatively computed, taking into account P's \$40 loss on the sale of the S stock computed pursuant to paragraph (c)(2)(iii) of this section. The group has a \$50 consolidated net operating loss for Year 1 that, under the principles of § 1.1502-21(b)(2)(iv), is wholly attributable to S and a consolidated capital loss of \$40 that, under the principles of § 1.1502-21(b)(2)(iv), is wholly attributable to P.

(E) *Tentative reduction of attributes.* Next, pursuant to paragraph (c)(2)(v) of this section, the rules of sections 108 and 1017 and § 1.1502-28 are tentatively applied to reduce attributes remaining after the tentative computation of the tax imposed. Pursuant to § 1.1502-28(a)(2), the tax attributes attributable to S would first be reduced to take into account its \$100 of excluded COD income. Accordingly, the consolidated net operating loss for Year 1 would be reduced by \$50, the portion of that consolidated net operating loss attributable to S under the principles of § 1.1502-21(b)(2)(iv), to \$0. Then, pursuant to § 1.1502-28(a)(4), S's remaining \$50 of

excluded COD income would reduce the consolidated capital loss attributable to P of \$40 by \$40 to \$0. The remaining \$10 of excluded COD income would have no effect.

(F) *Actual adjustment of stock basis.* Pursuant to paragraph (c)(2)(vi) of this section, § 1.1502-32 is applied to reflect the amount of S's income and gain included, and unlimited deductions and losses that are absorbed, in the tentative computation of the tax imposed for the year of the disposition and the excluded COD income tentatively applied to reduce attributes and the attributes reduced in respect of the excluded COD income pursuant to the previous step. Under § 1.1502-32(b), the absorption of \$30 of S's loss, the application of \$90 of S's excluded COD income to reduce attributes of P and S, and the reduction of the \$50 loss attributable to S in respect of the excluded COD income results in a positive adjustment of \$10 to P's basis in the S stock. P's basis in the S stock, therefore, is \$100.

(G) *Actual computation of stock gain or loss.* Pursuant to paragraph (c)(2)(vii) of this section, P's actual gain or loss on the sale of the S stock is computed using the basis computed in the previous step. Accordingly, P recognizes an \$80 loss on the disposition of the S stock.

(H) *Actual computation of tax imposed.* Pursuant to paragraph (c)(2)(viii) of this section, the tax imposed is computed by taking into account P's \$80 loss from the sale of S stock. Before the application of § 1.1502-28, therefore, the group has a consolidated net operating loss of \$50 that is wholly attributable to S under the principles of § 1.1502-21(b)(2)(iv), and a consolidated capital loss of \$80 that is wholly attributable to P under the principles of § 1.1502-21(b)(2)(iv).

(I) *Actual reduction of attributes.* Pursuant to paragraph (c)(2)(ix) of this section, sections 108 and 1017 and § 1.1502-28 are then actually applied to reduce attributes remaining after the actual computation of the tax imposed. Pursuant to § 1.1502-28(a)(2), the tax attributes attributable to S must first be reduced to take into account its \$100 of excluded COD income. Accordingly, the consolidated net operating loss for Year 1 is reduced by \$50, the portion of that consolidated net operating loss attributable to S under the principles of § 1.1502-21(b)(2)(iv), to \$0. Then, pursuant to § 1.1502-28(a)(4), S's remaining \$50 of excluded COD income reduces consolidated tax attributes. In particular, without regard to the limitation imposed by paragraph (c)(2)(ix)(A) of this section, the \$80 consolidated capital loss, which under the principles of § 1.1502-21(b)(2)(iv) is attributable to P, would be reduced by \$50 from \$80 to \$30. However, the limitation imposed by paragraph (c)(2)(ix)(A) of this section prevents the reduction of the consolidated capital loss attributable to P by more than \$40.

Therefore, the consolidated capital loss attributable to P is reduced by only \$40 in respect of S's excluded COD income. The remaining \$10 of excluded COD income has no effect.

*Example 2. Member other than departing member realizes excluded COD income.* (i) *Facts.* P owns all of S1's and S2's stock. P's basis in S2's stock is \$600. For Year 1, P has ordinary income of \$30, S1 has a \$100 ordinary loss and \$100 of excluded COD income from the discharge of non-intercompany indebtedness, and S2 has \$200 of ordinary loss. P sells the S2 stock for \$600 at the close of Year 1. As of the beginning of Year 2, S1 has Asset A with a basis of \$0 and a fair market value of \$10.

(ii) *Analysis.* The steps used to compute the tax imposed on the group, to effect the reduction of attributes, and to compute the limitations on the use and reduction of attributes are as follows:

(A) *Computation of limitation on deductions and losses to offset income or gain.* To determine the amount of the limitation under paragraph (c)(2)(i) of this section on S2's loss and the effect of the absorption of S2's loss on P's basis in S2's stock under § 1.1502-32(b), P's gain or loss from the sale of S2's stock is not taken into account. The group is tentatively treated as having a consolidated net operating loss of \$270 (P's \$30 of income minus S1's \$100 loss and S2's \$200 loss). Consequently, \$20 of S2's loss from Year 1 is unlimited and \$180 of S2's loss from Year 1 is limited under paragraph (c)(2)(i) of this section. Under the principles of § 1.1502-21(b)(2)(iv), \$90 of the consolidated net operating loss is attributable to S1 and \$180 of the consolidated net operating loss is attributable to S2.

(B) *Tentative adjustment of stock basis.* Then, pursuant to paragraph (c)(2)(ii) of this section, § 1.1502-32 is tentatively applied to adjust the basis of S2's stock. For this purpose, however, adjustments to the basis of S2's stock attributable to the reduction of attributes in respect of S1's excluded COD income are not taken into account. Under § 1.1502-32(b), the absorption of \$20 of S2's loss decreases P's basis in S2's stock by \$20 to \$580.

(C) *Tentative computation of stock gain or loss.* Then, P's income, gain, or loss from the disposition of S2 stock is computed pursuant to paragraph (c)(2)(iii) of this section using the basis computed in the previous step. Thus, P is treated as recognizing a \$20 gain from the sale of the S2 stock.

(D) *Tentative computation of tax imposed.* Pursuant to paragraph (c)(2)(iv) of this section, the tax imposed for the year of disposition is then tentatively computed, taking into account P's \$20 gain from the sale of S2 stock computed pursuant to paragraph (c)(2)(iii) of this section. Although S2's limited loss cannot be used to offset P's \$20 gain from the sale of S2's stock under the rules of

this section, S1's loss will offset that gain. Therefore, the group is tentatively treated as having a consolidated net operating loss of \$250, \$70 of which is attributable to S1 and \$180 of which is attributable to S2 under the principles of § 1.1502-21(b)(2)(iv).

(E) *Tentative reduction of attributes.* Next, pursuant to paragraph (c)(2)(v) of this section, the rules of sections 108 and 1017 and § 1.1502-28 are tentatively applied to reduce attributes remaining after the tentative computation of the tax imposed. Pursuant to § 1.1502-28(a)(2), the tax attributes attributable to S1 would first be reduced to take into account its \$100 of excluded COD income. Accordingly, the consolidated net operating loss for Year 1 would be reduced by \$70, the portion of that consolidated net operating loss attributable to S1 under the principles of § 1.1502-21(b)(2)(iv), to \$0. Then, pursuant to § 1.1502-28(a)(4), S1's remaining \$30 of excluded COD income would reduce the consolidated net operating loss for Year 1 attributable to S2 of \$180 by \$30 to \$150.

(F) *Actual adjustment of stock basis.* Pursuant to paragraph (c)(2)(vi) of this section, § 1.1502-32 is applied to reflect the amount of S2's income and gain included, and unlimited deductions and losses that are absorbed, in the tentative computation of the tax imposed for the year of the disposition and the excluded COD income tentatively applied to reduce attributes and the attributes reduced in respect of the excluded COD income pursuant to the previous step. Under § 1.1502-32(b), the absorption of \$20 of S2's loss to offset a portion of P's income and the application of \$30 of S1's excluded COD income to reduce attributes attributable to S2 results in a negative adjustment of \$50 to P's basis in the S2 stock. P's basis in the S2 stock, therefore, is \$550.

(G) *Actual computation of stock gain or loss.* Pursuant to paragraph (c)(2)(vii) of this section, P's actual gain or loss on the sale of the S2 stock is computed using the basis computed in the previous step. Therefore, P recognizes a \$50 gain on the disposition of the S2 stock.

(H) *Actual computation of tax imposed.* Pursuant to paragraph (c)(2)(viii) of this section, the tax imposed is computed by taking into account P's \$50 gain from the disposition of the S2 stock. Before the application of § 1.1502-28, therefore, the group has a consolidated net operating loss of \$220, \$40 of which is attributable to S1 and \$180 of which is attributable to S2 under the principles of § 1.1502-21(b)(2)(iv).

(I) *Actual reduction of attributes.* Pursuant to paragraph (c)(2)(ix) of this section, sections 108 and 1017 and § 1.1502-28 are then actually applied to reduce attributes remaining after the actual computation of the tax imposed. Pursuant to § 1.1502-28(a)(2), the tax attributes attributable to S1 must first be



reduced to take into account its \$100 of excluded COD income. Accordingly, the consolidated net operating loss for Year 1 is reduced by \$40, the portion of that consolidated net operating loss attributable to S1 under the principles of § 1.1502-21(b)(2)(iv), to \$0. Then, pursuant to § 1.1502-28(a)(4), without regard to the limitation imposed by paragraph (c)(2)(ix)(B) of this section, S1's remaining \$60 of excluded COD income would reduce S2's net operating loss of \$180 to \$120. However, the limitation imposed by paragraph (c)(2)(ix)(B) of this section prevents the reduction of S2's loss by more than \$30. Therefore, S2's loss of \$180 is reduced by \$30 to \$150 in respect of S1's excluded COD income. The remaining \$30 of excluded COD income has no effect.

*Example 3. Lower-tier corporation of departing member realizes excluded COD income.* (i) *Facts.* P owns all of S1's stock, S2's stock, and S3's stock. S1 owns all of S4's stock. P's basis in S1's stock is \$50 and S1's basis in S4's stock is \$50. For Year 1, P has \$50 of ordinary loss, S1 has \$100 of ordinary loss, S2 has \$150 of ordinary loss, S3 has \$50 of ordinary loss, and S4 has \$50 of ordinary loss and \$80 of excluded COD income from the discharge of non-intercompany indebtedness. P sells the S1 stock for \$100 at the close of Year 1. As of the beginning of Year 2, S4 has Asset A with a fair market value of \$10. After the computation of tax imposed for Year 1 and before the application of sections 108 and 1017 and § 1.1502-28, Asset A has a basis of \$0.

(ii) *Analysis.* The steps used to compute the tax imposed on the group, to effect the reduction of attributes, and to compute the limitations on the use and reduction of attributes are as follows:

(A) *Computation of limitation on deductions and losses to offset income or gain.* To determine the amount of the limitation under paragraph (c)(2)(i) of this section on S1's and S4's losses and the effect of the absorption of S1's and S4's losses on P's basis in S1's stock under § 1.1502-32(b), P's gain or loss from the sale of S1's stock is not taken into account. The group is tentatively treated as having a consolidated net operating loss of \$400. Consequently, \$100 of S1's loss and \$50 of S4's loss is limited under paragraph (c)(2)(i) of this section.

(B) *Tentative adjustment of stock basis.* Then, pursuant to paragraph (c)(2)(ii) of this section, § 1.1502-32 is tentatively applied to adjust the basis of S1's stock. For this purpose, adjustments to the basis of S1's stock attributable to S4's realization of excluded COD income and the reduction of attributes in respect of such excluded COD income are not taken into account. There is no adjustment under § 1.1502-32 to the basis of the S1 stock. Therefore, P's basis in the S1 stock for this purpose is \$50.

(C) *Tentative computation of stock gain or loss.* Then, P's income, gain, or loss from the

sale of S1 stock is computed pursuant to paragraph (c)(2)(iii) of this section using the basis computed in the previous step. Thus, P is treated as recognizing a \$50 gain from the sale of the S1 stock.

(D) *Tentative computation of tax imposed.* Pursuant to paragraph (c)(2)(iv) of this section, the tax imposed for the year of disposition is then tentatively computed, taking into account P's \$50 gain from the sale of the S1 stock computed pursuant to paragraph (c)(2)(iii) of this section. Although S1's and S4's limited losses cannot be used to offset P's \$50 gain from the sale of S1's stock under the rules of this section, \$10 of P's loss, \$30 of S2's loss, and \$10 of S3's loss will offset that gain. Therefore, the group is tentatively treated as having a consolidated net operating loss of \$350, \$40 of which is attributable to P, \$100 of which is attributable to S1, \$120 of which is attributable to S2, \$40 of which is attributable to S3, and \$50 of which is attributable to S4 under the principles of § 1.1502-21(b)(2)(iv).

(E) *Tentative reduction of attributes.* Next, pursuant to paragraph (c)(2)(v) of this section, the rules of sections 108 and 1017 and § 1.1502-28 are tentatively applied to reduce attributes remaining after the tentative computation of the tax imposed. Pursuant to § 1.1502-28(a)(2), the tax attributes attributable to S4 would first be reduced to take into account its \$80 of excluded COD income. Accordingly, the consolidated net operating loss for Year 1 would be reduced by \$50, the portion of the consolidated net operating loss attributable to S4 under the principles of § 1.1502-21(b)(2)(iv), to \$300. Then, pursuant to § 1.1502-28(a)(4), S4's remaining \$30 of excluded COD income would reduce the consolidated net operating loss for Year 1 that is attributable to other members. Therefore, the consolidated net operating loss for Year 1 would be reduced by \$30. Of that amount, \$4 is attributable to P, \$10 is attributable to S1, \$12 is attributable to S2, and \$4 is attributable to S3.

(F) *Actual adjustment of stock basis.* Pursuant to paragraph (c)(2)(vi) of this section, § 1.1502-32 is applied to reflect the amount of S1's and S4's income and gain included, and unlimited deductions and losses that are absorbed, in the tentative computation of tax imposed for the year of the disposition and the excluded COD income tentatively applied to reduce attributes and the attributes reduced in respect of the excluded COD income pursuant to the previous step. Under § 1.1502-32(b), the application of \$80 of S4's excluded COD income to reduce attributes, and the reduction of S4's loss in the amount of \$50 and S1's loss in the amount of \$10 in respect of the excluded COD income results in a positive adjustment of \$20 to P's basis in the S1 stock. Accordingly, P's basis in S1 stock is \$70.

(G) *Actual computation of stock gain or loss.* Pursuant to paragraph (c)(2)(vii) of this section, P's actual gain or loss on the sale of the S1 stock is computed using the basis computed in the previous step. Accordingly, P recognizes a \$30 gain on the disposition of the S1 stock.

(H) *Actual computation of tax imposed.* Pursuant to paragraph (c)(2)(viii) of this section, the tax imposed is computed by taking into account P's \$30 gain from the sale of S1 stock. Before the application of § 1.1502-28, therefore, the group has a consolidated net operating loss of \$370, \$44 of which is attributable to P, \$100 of which is attributable to S1, \$132 of which is attributable to S2, \$44 of which is attributable to S3, and \$50 of which is attributable to S4.

(I) *Actual reduction of attributes.* Pursuant to paragraph (c)(2)(ix) of this section, sections 108 and 1017 and § 1.1502-28 are then actually applied to reduce attributes remaining after the actual computation of the tax imposed. Pursuant to § 1.1502-28(a)(2), the tax attributes attributable to S4 must first be reduced to take into account its \$80 of excluded COD income. Accordingly, the consolidated net operating loss for Year 1 is reduced by \$50, the portion of that consolidated net operating loss attributable to S4 under the principles of § 1.1502-21(b)(2)(iv), to \$320. Then, pursuant to § 1.1502-28(a)(4), without regard to the limitation imposed by paragraph (c)(2)(ix)(A) of this section, S4's remaining \$30 of excluded COD income would reduce the consolidated net operating loss for Year 1 by \$30 (\$4.12 of the consolidated net operating loss attributable to P, \$9.38 of the consolidated net operating loss attributable to S1, \$12.38 of the consolidated net operating loss attributable to S2, and \$4.12 of the consolidated net operating loss attributable to S3) to \$290. However, the limitation imposed by paragraph (c)(2)(ix)(A) of this section prevents the reduction of the consolidated net operating loss attributable to P, S2, and S3 by more than \$4, \$12, and \$4 respectively. The \$.62 of excluded COD income that would have otherwise reduced the consolidated net operating loss attributable to P, S2, and S3 is applied to reduce the consolidated net operating loss attributable to S1. Therefore, S1 carries forward \$90 of loss.

*Example 4. Excess loss account taken into account.* (i) *Facts.* P is the common parent of a consolidated group. On Day 1 of Year 2, P acquired all of the stock of S1. As of the beginning of Year 2, S1 had a \$30 net operating loss carryover from Year 1, a separate return limitation year. A limitation under § 1.1502-21(c) applies to the use of that loss by the P group. For Years 1 and 2, the P group had no consolidated taxable income or loss. On Day 1 of Year 3, S1 acquired all of the stock of S2 for \$10. In Year 3, P had ordinary income of \$10, S1 had ordinary income of \$25, and S2 had an ordinary loss of \$50. In addition, in

Year 3, S2 realized \$20 of excluded COD income from the discharge of non-intercompany indebtedness. After the discharge of this indebtedness, S2 had no liabilities. As of the beginning of Year 4, S2 had Asset A with a fair market value of \$10. After the computation of tax imposed for Year 3 and before the application of sections 108 and 1017 and § 1.1502-28, Asset A has a basis of \$0. S2 had no taxable income (or loss) for Year 1 and Year 2.

(ii) *Analysis.* The steps used to compute the tax imposed on the group, to effect the reduction of attributes, and to compute the limitations on the use and reduction of attributes are as follows:

(A) *Computation of limitation on deductions and losses to offset income or gain, tentative basis adjustments, tentative computation of stock gain or loss.* Because it is not initially apparent that there has been a disposition of stock, paragraph (c)(2)(i) of this section does not limit the use of deductions to offset income or gain, no adjustments to the basis are required pursuant to paragraph (c)(2)(ii) of this section, and no stock gain or loss is computed pursuant to paragraph (c)(2)(iii) of this section or taken into account in the tentative computation of tax imposed pursuant to paragraph (c)(2)(iv) of this section.

(B) *Tentative computation of tax imposed.* Pursuant to paragraph (c)(2)(iv) of this section, the tax imposed for Year 3 is tentatively computed. For Year 3, the P group has a consolidated taxable loss of \$15, all of which is attributable to S2 under the principles of § 1.1502-21(b)(2)(iv).

(C) *Tentative reduction of attributes.* Next, pursuant to paragraph (c)(2)(v) of this section, the rules of sections 108 and 1017 and § 1.1502-28 are tentatively applied to reduce attributes remaining after the tentative computation of tax imposed. Pursuant to § 1.1502-28(a)(2), the tax attributes attributable to S2 would first be reduced to take into account its \$20 of excluded COD income. Accordingly, the consolidated net operating loss for Year 3 is reduced by \$15, the portion of that consolidated net operating loss attributable to S2 under the principles of § 1.1502-21(b)(2)(iv), to \$0. The remaining \$5 of excluded COD income is not applied to reduce attributes as there are no remaining attributes that are subject to reduction.

(D) *Actual adjustment of stock basis.* Pursuant to paragraph (c)(2)(vi) of this section, § 1.1502-32 is applied to reflect the amount of S2's income and gain included, and unlimited deductions and losses that are absorbed, in the tentative computation of tax imposed for the year of the disposition and the excluded COD income tentatively applied to reduce attributes and the attributes reduced in respect of the excluded COD income pursuant to the previous step. Under § 1.1502-32, the absorption of \$35 of S2's loss, the application of \$15 in respect of S2's excluded COD income to

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reduce attributes, and the reduction of \$15 in respect of the loss attributable to S2 reduced in respect of the excluded COD income results in a negative adjustment of \$35 to the basis of the S2 stock. Therefore, S1 has an excess loss account of \$25 in the S2 stock.

(E) *Actual computation of stock gain or loss.* Pursuant to paragraph (c)(2)(vii) of this section, S1's actual gain or loss, if any, on the S2 stock is computed. Because S2 realized \$5 of excluded COD income that was not applied to reduce attributes, pursuant to § 1.1502-19(b)(1) and (c)(1)(iii)(B), S1 is required to take into account \$5 of its excess loss account in the S2 stock.

(F) *Actual computation of tax imposed.* Pursuant to paragraph (c)(2)(viii) of this section, the tax imposed is computed by taking into account the \$5 of the excess loss account in the S2 stock required to be taken into account. See § 1.1502-28(b)(6) (requiring an excess loss account that is required to be taken into account as a result of the application of § 1.1502-19(c)(1)(iii)(B) to be included in the group's tax return for the year that includes the date of the debt discharge). However, pursuant to paragraph (c)(2)(viii) of this section, such amount may not be offset by any of the consolidated net operating loss attributable to S2. It may, however, subject to applicable limitations, be offset by the separate net operating loss of S1 from Year 1.

(G) *Actual reduction of attributes.* Pursuant to paragraph (c)(2)(ix) of this section, sections 108 and 1017 and § 1.1502-28 are then actually applied to reduce attributes remaining after the actual computation of the tax imposed. Attributes will be actually reduced in the same way that they were tentatively reduced.

(6) *Additional rules for multiple dispositions.* [Reserved]

(7) *Effective date.* This paragraph (c) applies to dispositions of subsidiary stock that occur after March 22, 2005. Taxpayers may apply § 1.1502-11(c) of REG-167265-03 (2004-15 IRB 730) (see § 601.601(d)(2) of this chapter) in whole, but not in part, to any disposition of subsidiary stock that occurs on or before March 22, 2005, if a member of the group realized excluded COD income after August 29, 2003, in the taxable year that includes the date of the disposition of such subsidiary stock.

(d) *Disallowance of loss attributable to pre-1966 distributions.* No loss shall be allowed upon the sale or other disposition of stock, bonds, or other obligations of a member or former member to the extent that such loss is attributable to a distribution made in an affiliated year beginning before January

1, 1966, out of earnings and profits accumulated before the distributing corporation became a member.

[T.D. 7246, 38 FR 759, Jan. 4, 1973]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 1.1502-11, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.fdsys.gov](http://www.fdsys.gov).

### COMPUTATION OF SEPARATE TAXABLE INCOME

#### § 1.1502-12 Separate taxable income.

The separate taxable income of a member (including a case in which deductions exceed gross income) is computed in accordance with the provisions of the Code covering the determination of taxable income of separate corporations, subject to the following modifications:

(a) Transactions between members and transactions with respect to stock, bonds, or other obligations of members shall be reflected according to the provisions of § 1.1502-13;

(b) Any deduction which is disallowed under §§ 1.1502-15A or 1.1502-15 shall be taken into account as provided in those sections;

(c) The limitation on deductions provided in section 615(c) or section 617(h) shall be taken into account as provided in § 1.1502-16;

(d) The method of accounting under which such computation is made and the adjustments to be made because of any change in method of accounting shall be determined under § 1.1502-17;

(e) Inventory adjustments shall be made as provided in § 1.1502-18;

(f) Any amount included in income under § 1.1502-19 shall be taken into account;

(g) In the computation of the deduction under section 167, property shall not lose its character as new property as a result of a transfer from one member to another member during a consolidated return year if:

(1) The transfer occurs on or before January 4, 1973, or

(2) The transfer occurs after January 4, 1973, and the transfer is an intercompany transaction as defined in § 1.1502-13 or the basis of the property in the hands of the transferee is determined